Supreme Court U.S.
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No. 79-1709.

In the Supreme Court of the United States.

OCTOBER TERM, 1980.

THOMAS J. ALBERNAZ AND EDWARD RODRIGUEZ,
PETITIONERS,
v.
UNITED STATES OF AMERICA,
RESPONDENT.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

Joint Appendix.

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Relevant Docket Entries.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA.

1977		
February		
10		Indictment returned at Miami, Florida.
17		RODRIGUEZ: Arr. Proc. 2/16/77, plea of not guilty entered.

1977		
February		
23	ALBERNAZ: SMIGOWSKI: MARTINS:	Arr. Proc. 2/17/77, pleas of not guilty entered.
April		
3	ALBERNAZ: RODRIGUEZ: SMIGOWSKI: MARTINS:	Jury trial.
6	MARTINS: RODRIGUEZ: SMIGOWSKI: ALBERNAZ:	Jury trial continued.
7	ALBERNAZ: RODRIGUEZ: SMIGOWSKI: MARTINS:	Jury trial continued.
12	ALBERNAZ: RODRIGUEZ: SMIGOWSKI: MARTINS:	Jury trial continued
14	ALBERNAZ: RODRIGUEZ: SMIGOWSKI: MARTINS:	Jury trial continued, and concluded. Verdict returned as to all defts. Guilty on Counts 1 and 2.
	ALBERNAZ:	Jury verdict: GUILTY as to Cts. 1 & 2.
	RODRIGUEZ:	Jury verdict: GUILTY as to Cts. 1 & 2.
	SMIGOWSKI:	Jury verdict: GUILTY as to Cts. 1 & 2.
	MARTINS:	Jury verdict: GUILTY as to Cts. 1 & 2.

1977		
May		
26	RODRIGUEZ:	J&C: AG, 4½ yrs.; Spec. Parole, 2 yr., as to each of Cts. 1 and 2, consecutive. (5/26/77-CA)R-162.
	ALBERNAZ:	J&C: AG, 3½ yr.; Spec. Parole, 2 yr. as to each of Cts. 1 & 2, consecutive. Appeal bond in same amount and conditions as presently in effect, to be posted by 5:00 P.M., 6/1/77.
	ALBERNAZ:	*Notice of Appeal* filed from judgment and sentence entered 5/26/77.
June		
1	RODRIGUEZ:	*Notice of Appeal* from Final Judgment of Guilt & Sentence ent. 5/26/77.
10	ALBERNAZ & SMIGOWSKI:	Notice of Defts. objection to cons. sent. & special parole term, overruled. (CA).
27	RODRIGUEZ:	J&C ret'd. exec., on 6/20/77, Deft. delvd. to U.S.P., Atlanta, taken into custody 2/2/77 & in continuous since.
1980		
June		
2	RODRIGUEZ & MARTINS:	Corrected Opinion of U.S.C.A. held that (1) there was sufficient

1979
June
2

evidentiary basis for jury to conclude, beyond reasonable doubt, that defts. were predisposed to import marijuana and were not entrapped into doing so; (2) confession made after being counseled by friend was admissible; (3) reasonable doubt charge did not require reversal; (4) prosecutor's comments that he thought evidence against defts. was overwhelming and that he thought jury could reach only conclusion of guilt did not have prejudicial impact; (5) evidence was sufficient to prove conspiracy to distribute; (6) evidence was not sufficient to sustain distribution of conviction of defts. who were peripheral participants in importation scheme and who would not have control over marijuana once it was within the U.S. and (7) separate convictions of conspiracy to import and conspiracy to distribute would be affirmed notwithstanding contention that there was a single illegal agreement. AFFIRMED IN PART, REVERSED IN PART AND REMANDED *AS TO R. RODRIGUEZ & W. MARTINS ONLY.* *348*

RODRIGUEZ & MARTINS: Corrected Opinion of USCA on granting hearing en banc held that: (1) provisions of the Drug Control

1980
June
2

Act, one prohibiting a conspiracy to import a controlled substance and another prohibiting a conspiracy to distribute a controlled substance, authorize, in a proper case, the imposition of consecutive sentences where a conspiracy with dual objectives is involved and (2) simultaneous trial and subsequent imposition of consecutive sentences for conspiring to achieve different illegal objectives does not violate the double jeopardy clause. AFFIRMED IN PART, REVERSED IN PART & REMANDED. *AS TO E. RODRIGUEZ & WM. MARTINS ONLY.* 349

RODRIGUEZ & MARTINS: Mandate of U.S.C.A. that this cause is affirmed to the convictions of appellants, Rodriguez & Albernaz on Cts. I & II; the judgment as to appellants, Smigowski & Martins convictions on Ct. I is affirmed, and reversed on Ct. II, and this cause is hereby remanded to District Court with instructions to dismiss the Ct. II convictions of Smigowski & Martins in accordance with opinion of U.S.C.A. en

1980		
June		
2		banc court. (5/30/80-USCA) *AS TO E. RODRIGUEZ & WM. MARTINS ONLY* M-6/3/80 Record to be ret'd 351
6	ALBERNAZ & SMIGOWSKI:	Opinion of U.S.C.A. same as docket no. 348. *ALBERNAZ & SMIGOWSKI ONLY*
	ALBERNAZ & SMIGOWSKI:	Opinion of U.S.C.A. it is ordered that cause be reheard by Court en banc with oral argument.
	ALBERNAZ & SMIGOWSKI:	Opinion of U.S.C.A. same as docket no. 349. *AS TO ALBERNAZ & SMIGOWSKI ONLY*
	ALBERNAZ & SMIGOWSKI:	Mandate of U.S.C.A. same as docket no. 351. (6/2/80 USCA) M-6/6/80
July		
22	ALBERNAZ:	J & C returned exec. Deft. surrendered on 7-15-80 to F.P.C. at Eglin A.F.B. Fla.

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT.

1978	
March	
20	Calendar Information: Hearing Panel: Skelton, Fay, Rubin 3/20/78
November	
14	Opinion Information: Affirmed as to Rodriguez & Albernaz on Counts I and II.

1978	
November	
20	Flg. order on Court's own motion granting that case be heard En Banc with oral argument before all Active Fifth Circuit Judges.
1979	
January	
23	Minute Entry-Case heard EN BANC before Hons. JRB, JPC, ILG, RAA, JCG, CC, PHR, TGG, GBT, JCH, PTF, ABR & RSV.
1980	
February	
27	Opinion Information: Affirmed as to Rodriguez and Albernaz on Counts I & II.

United States District Court
for the Southern District of Florida

No. 77-70-CR-CA
21 USC §963
M/S $15,000 - 5 yrs.
21 USC §846
M/S $15,000 - 5 yrs.

UNITED STATES OF AMERICA

v.

THOMAS J. ALBERNAZ, EDWARD RODRIGUEZ, AKA RICK, PETER SMIGOWSKI, KENNETH BERGMAN, WILLIAM JOHN MARTINS, NINO RINSI CADENA, PEDRO A. BALLESTEROS ESQUEBEL, GILBERTO YEPES BORJAS, CESAR DELA ROSA, NARCISO BARBA CADENA, DANIEL GARCIA GOMEZ, EFRAIN CARREAZO CARDALES, PEDRO RUIZ ARRIETA, JORGE LOPEZ WAGNER, NICANOR RIVERA DIAZ, ALEJANDRO VALLE MANTARESS, ANDRES GOMEZ ORTEGA, AND FRANCISCO M. CEBA BRUNO

INDICTMENT.

The Grand Jury charges that:

COUNT I

Starting from on or about mid-December, 1976, and continuing until on or about February 1, 1977, at Fort Lauderdale, Florida, Broward County, and other places within and without the Southern District of Florida, the defendants,

THOMAS J. ALBERNAZ,
EDWARD RODRIGUEZ, aka rick,
PETER SMIGOWSKI,
KENNETH BERGMAN,

WILLIAM JOHN MARTINS,
NINO RINSI CADENA,
PEDRO A. BALLESTEROS ESQUEBEL,
GILBERTO YEPES BORJAS,
CESAR DELA ROSA,
NARCISO BARBA CADENA,
DANIEL GARCIA GOMEZ,
EFRAIN CARREAZO CARDALES,
PEDRO RUIZ ARRIETA,
JORGE LOPEZ WAGNER,
NICANOR RIVERA DIAZ,
ALEJANDRO VALLE MANTARESS,
ANDRES GOMEZ ORTEGA, and
FRANCISCO M. CEBA BRUNO

did knowingly and wilfully combine, conspire, confederate and agree with each other and with other persons to the Grand Jury unknown, to commit an offense against the United States of America, to-wit: to import into the United States, from a place outside the United States, 30 tons of marihuana, a Schedule I controlled substance, in violation of Title 21, United States Code, Section 952.

In furtherance of the conspiracy, and to effect the objects thereof, the defendants performed the following overt acts:

OVERT ACTS

1. On or about December 29, 1976, at Roger's Marina, 2700 S.W. 25th Terrace, Fort Lauderdale, Florida, defendant, THOMAS J. ALBERNAZ, met with an undercover agent of the Drug Enforcement Administration.

2. On or about January 7, 1977, at the Holiday Inn, 3355 North Federal Highway, Fort Lauderdale, Florida, the defendants, THOMAS J. ALBERNAZ, EDWARD RODRIGUEZ, aka Rick, PETER SMIGOWSKI, and KENNETH BERGMAN, met with an

undercover agent of the Drug Enforcement Administration and explained to him that they had a freighter loaded with marihuana which they wanted off-loaded by smaller boats shuttling between the freighter and the Florida coast.

3. On or about January 8, 1977, at the Holiday Inn, 3355 North Federal Highway, Fort Lauderdale, Florida, the defendants, EDWARD RODRIGUEZ, aka Rick, PETER SMIGOWSKI, and KENNETH BERGMAN, met with three (3) undercover agents of the Drug Enforcement Administration.

4. On or about January 11, 1977, at the Black Angus Restaurant, 7900 S.W. 104th Street, Miami, Florida, the defendant, THOMAS ALBERNAZ, met with two (2) undercover agents of the Drug Enforcement Administration.

5. On or about January 17, 1977, at the Palm Harbor Marina, Flagler Street, West Palm Beach, Florida, the defendant, THOMAS ALBERNAZ, inspected the vessel "Catchalot II".

6. On or about January 25, 1977, at Bahia Honda Island, Big Pine Key, Monroe County, Florida, the defendants, EDWARD RODRIGUEZ, aka Rick, and THOMAS ALBERNAZ, inspected an area as the off-load site for 30 tons of marihuana from a freighter.

7. On or about January 27, 1977, at a Holiday Inn, I-95, West Palm Beach, Florida, the defendant, THOMAS ALBERNAZ, gave to two (2) undercover agents of the Drug Enforcement Administration the coordinates for the location of the freighter "Labrador", for a rendezvous between the freighter "Labrador" and the vessel "Catchalot II".

8. On or about January 31, 1977, the defendants, EDWARD RODRIGUEZ, aka Rick, THOMAS ALBERNAZ, and WILLIAM MARTINS, flew from Fort Lauderdale, Florida to Marsh Harbor, Great Abaco Island, The Bahamas, to meet with undercover agents of the Drug Enforcement Administration.

9. On or about February 1, 1977, at a point approximately 35 miles east of Marsh Harbor, Great Abaco Island, in the Atlantic Ocean, the defendant, NINO RINSI CADENA, directed

crewmen of the freighter "Labrador" to off-load 150 bales of marihuana onto the vessel "Catchalot II".

10. On or about February 1, 1977, at a point east of Marsh Harbor, Great Abaco Island, in the Atlantic Ocean, the freighter "Labrador", while carrying 55 tons of marihuana, was seized by the United States Coast Guard Cutter "Dauntless".

All in violation of Title 21, United States Code, Section 963.

COUNT II

Starting from on or about mid-December, 1976, and continuing until on or about February 1, 1977, at Fort Lauderdale, Florida, Broward County, and other places within and without the Southern District of Florida, the defendants,

THOMAS J. ALBERNAZ,
EDWARD RODRIGUEZ, aka Rick,
PETER SMIGOWSKI,
KENNETH BERGMAN,
WILLIAM JOHN MARTINS,
NINO RINSI CADENA,
PEDRO A. BALLESTEROS ESQUEBEL,
GILBERTO YEPES BORJAS,
CESAR DELA ROSA,
NARCISO BARBA CADENA,
DANIEL GARCIA GOMEZ,
EFRAIN CARREAZO CARDALES,
PEDRO RUIZ ARRIETA,
JORGE LOPEZ WAGNER,
NICANOR RIVERA DIAZ,
ALEJANDRO VALLE MANTARESS,
ANDRES GOMEZ ORTEGA, and
FRANCISCO M. CEBA BRUNO

did knowingly and wilfully combine, conspire, confederate and agree with each other and with other persons to the Grand

Jury unknown, to commit an offense against the United States of America, to-wit: to distribute 30 tons of marihuana, a Schedule I controlled substance, in violation of Title 21, United States Code, Section 841.

In furtherance of the conspiracy, and to effect the objects thereof, the defendants performed the following overt acts:

OVERT ACTS

1. On or about December 29, 1976, at Roger's Marina, 2700 S.W. 25th Terrace, Fort Lauderdale, Florida, defendant, THOMAS J. ALBERNAZ, met with an undercover agent of the Drug Enforcement Administration.

2. On or about January 7, 1977, at the Holiday Inn, 3355 North Federal Highway, Fort Lauderdale, Florida, the defendants, THOMAS J. ALBERNAZ, EDWARD RODRIGUEZ, aka Rick, PETER SMIGOWSKI, and KENNETH BERGMAN, met with an undercover agent of the Drug Enforcement Administration and explained to him that they had a freighter loaded with marihuana which they wanted off-loaded by smaller boats shuttling between the freighter and the Florida coast.

3. On or about January 8, 1977, at the Holiday Inn, 3355 North Federal Highway, Fort Lauderdale, Florida, the defendants, EDWARD RODRIGUEZ, aka Rick, PETER SMIGOWSKI, and KENNETH BERGMAN, met with three (3) undercover agents of the Drug Enforcement Administration.

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6. On or about January 25, 1977, at Bahia Honda Island, Big Pine Key, Monroe County, Florida, the defendants, ED-

WARD RODRIGUEZ, aka Rick, and THOMAS ALBERNAZ, inspected an area as the off-load site for 30 tons of marihuana from a freighter.

7. On or about January 27, 1977, at a Holiday Inn, I-95, West Palm Beach, Florida, the defendant, THOMAS ALBERNAZ, gave to two (2) undercover agents of the Drug Enforcement Administration the coordinates for the location of the freighter "Labrador", for a rendezvous between the freighter "Labrador" and the vessel "Catchalot II".

8. On or about January 31, 1977, the defendants, EDWARD RODRIGUEZ, aka Rick, THOMAS ALBERNAZ, and WILLIAM MARTINS, flew from Fort Lauderdale, Florida to Marsh Harbor, Great Abaco Island, The Bahamas, to meet with undercover agents of the Drug Enforcement Administration.

9. On or about February 1, 1977, at a point approximately 35 miles east of Marsh Harbor, Great Abaco Island, in the Atlantic Ocean, the defendant, NINO RINSI CADENA, directed crewmen of the freighter "Labrador" to off-load 150 bales of marihuana onto the vessel "Catchalot II".

10. On or about February 1, 1977, at a point east of Marsh Harbor, Great Abaco Island, in the Atlantic Ocean, the freighter "Labrador", while carrying 55 tons of marihuana, was seized by the United States Coast Guard Cutter "Dauntless".

All in violation of Title 21, United States Code, Section 846.

A True Bill,
GLORIA OKELL
Foreman

ROBERT W. RUST
United States Attorney

BY: MICHAEL P. SULLIVAN
Assistant United States Attorney

United States District Court
for the Southern District of Florida.

Docket No. 77-70-CR-CA

UNITED STATES OF AMERICA

vs.

THOMAS J. ALBERNAZ

Judgment and Probation/Commitment Order

In the presence of the attorney for the government the defendant appeared in person on this date: *May 26, 1977*

Counsel WITH COUNSEL: Martin G. Weinberg

Plea NOT GUILTY

Finding & Judgment There being a finding/verdict of GUILTY. Defendant has been convicted as charged of the offense(s) of conspiracy to import into the United States marihuana, in violation of Title 21, United States Code, Section 952, as charged in COUNT I of the Indictment; and conspiracy to distribute marihuana in violation of Title 21, United States Code, Section 841, as charged in COUNT II of the Indictment.

Sentence or Probation Order

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of FORTY-TWO (42) MONTHS or until otherwise discharged by due process of law, and immediately upon release from incarceration, defendant shall serve a period of Special Parole for TWO (2) YEARS, as to each of COUNT I and COUNT II, it being further ORDERED that sentence imposed in COUNT II shall be served consecutive to sentence imposed on COUNT I.

Special Conditions of Probation

Appellate Bond is set in the same amount, with same conditions, as appearance bond presently in effect. Such bond to be posted with the Clerk of the Court by 5:00 P.M., June 1, 1977.

Commitment/ Recommendation

The court orders commitment to the custody of the Attorney General and recommends incarceration at Eglin AFB.

Signed by
C. CLYDE ATKINS
(U.S. District Judge)
May 26, 1977

United States District Court
for the Southern District of Florida.

Docket No. 77-70-CR-CA

UNITED STATES OF AMERICA

vs.

EDWARD RODRIGUEZ

Judgment and Probation/Commitment Order

In the presence of the attorney for the government the defendant appeared in person on this date: *May 26, 1977*

Counsel WITH COUNSEL: Raymond E. LaPorte,
408 Madison Street,
Tampa, Florida 33602

Plea NOT GUILTY

Finding & Judgment There being a finding/verdict of GUILTY. Defendant has been convicted as charged of the offense(s) of conspiracy to import into the United States marihuana, in violation of Title 21, United States Code, Section 952, as charged in COUNT I of the Indictment; and conspiracy to distribute marihuana in violation of Title 21, United States Code, Section 841, as charged in COUNT II of the Indictment.

Sentence or Probation Order

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of FOUR and one-half years (4½) or until otherwise discharged by due process of law, and immediately upon release from incarceration the defendant shall be placed on special parole for a period of Two (2) years, as to each of COUNT I and COUNT II, it being further

ORDERED AND ADJUDGED that sentence imposed in Count II shall be served consecutive to sentence imposed in Count I.

Signed by:

C. CLYDE ATKINS
(U.S. District Judge)

May 26, 1977

SUPREME COURT OF THE UNITED STATES

No. 79-1709

THOMAS J. ALBERNAZ AND EDWARD RODRIGUEZ

v.

UNITED STATES OF AMERICA

Order Allowing Certiorari: October 6, 1980

The petition for a writ of certiorari is granted.